budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Attachments to the proposal describing your organization or examples of other past work beyond those specifically requested above are discouraged. These attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf*. Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified. The criteria for the evaluation of each application will be as follows:

Programmatic (40%)

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished, to include the overall project goal(s), major tasks to achieve the goal(s), the strategies to be employed in completing the tasks, required staffing, and other required resources? Are there any approaches, techniques, or design aspects proposed that are new to NIC and will enhance the project?

Organizational (35%)

Do the proposed project staff members possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work? Does the applicant organization, group, or individual have the organizational capacity to complete all project tasks? Does the proposal contain project management and staffing plans that are realistic and sufficient to complete the project within the project time frame?

Project Management/Administration (25%)

Does the applicant identify reasonable objectives and/or milestones that reflect the key tasks, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project, and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Specific Requirements: Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements.*

All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions, Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support, NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

Note Concerning Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.601, Training and Staff Development. You are not subject to Executive Order 12372 and should check box b under section 16.

Robert M. Brown, Jr.,

Acting Director, National Institute of Corrections.

[FR Doc. 2013–16475 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemption From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2013–08, Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency'', D–11718.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency'' [Prohibited Transaction Exemption 2013–08; Exemption Application No. D–11718]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) and based upon the entire record, the Department amends the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 23144 (June 6, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6,1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 56 FR 7413 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); PTE 2006–07, 71 FR 32134 (June 2, 2006); PTE 2008–08, 73 FR 27570 (May 13, 2008); PTE 2009–16, 74 FR 30623 (June 26, 2009); and PTE 2009–31, 74 FR 59003 (November 16, 2009), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002–41, 67 FR 5487 (August 22, 2002) (collectively, the Underwriter Exemptions).

In addition, the Department also notes that it is granting individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc. FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); Barclays Bank PLC & Barclays Capital Inc., FAN 04–03E (February 4, 2004); Terwin Capital LLC, FAN 04–16E (August 18, 2004); BNP Paribas Securities Corporation, FAN 07–06E (July 7, 2007); SunTrust Robinson Humphrey, Inc., FAN 08–03E (March 10, 2008); Jefferies & Company Inc., FAN 09–03E (March 9, 2009); NatCity Investments, Inc., FAN 09–06E (March 28, 2009); Amherst Securities Group, LLC, FAN 09–12E (September 14, 2009); Cantor Fitzgerald & Company, FAN 11–05E (June 6, 2011); and Cortview Capital Securities LLC, FAN 11–08E (October 10, 2011); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62, 67 FR 44622 (July 3, 2002).

I. Transactions

A. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[3] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage- backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [4] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement;

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and

[3] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent

Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).

(1) Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by,

the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. ''Underwriter'' means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62); (2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or (3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means a credit rating agency that:

(i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO);

(ii) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and

(iii) Has had, within a period not exceeding 12 months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is made public to investors generally; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[6] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[7] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

Technical Correction to the Notice

In order to correct an inadvertent omission, the Department is adopting a correction to the Notice on its own motion. At footnote 13 on page 76773 of the Notice, the following organization and Final Authorization Number (FAN) is included in the list of organizations that the Department is granting individual relief for, after the phrase

''(August 24, 2003);'' ''Barclays Bank PLC & Barclays Capital Inc., FAN 04–03E (February 4, 2004)''.

Description of Proposed Amendment

On December 28, 2012, the Department published the Notice at 77 FR 76773. As set forth in the Notice, the Department proposed to revise the definition of ''Rating Agency,'' as set forth in section III.X of the Underwriter Exemptions, by eliminating any specific reference to a particular credit rating agency, and substituting instead the following:

Section III.X:

Effective as of the date of publication of a final amendment to the Underwriter Exemptions in the **Federal Register**, the term ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Written Comment

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice by February 11, 2013. Prior to the deadline, Barbara Klippert of Bingham McCutchen LLP made a request for an extension of the comment period on behalf of herself and a group of 11 other attorneys from various law firms (together with Ms. Klippert, the Commenters) collaboratively working on a comment letter (the Comment) because additional time was needed to coordinate all of the attorney comments.[5] Accordingly, the Department granted the Commenters a three-day extension of the comment period, and the Comment was received via email on February 14, 2013. No other comments were received during the comment period, and there were no requests for a public hearing.

The Commenters expressed general support for the modifications described in the Notice and requested certain clarifications and/or changes regarding: (1) Footnote 23 of the Notice; (2) the 12-month period described in clause (iii) of the definition of ''Rating Agency;'' (3) the term ''public rating,'' as set forth in sub-clause (iii) of the definition of a ''qualified ratings engagement;'' and (4) sub-clause (iv) of the definition of a ''qualified ratings engagement'' and certain preamble language relating thereto. The Comment and the Department's responses thereto are described in further detail below.

1. *Requested Clarification of Footnote 23.* Footnote 23 of the Notice states that ''[p]lan fiduciaries are responsible for confirming that any rating given for a certificate acquired pursuant to an Underwriter Exemption was issued by a credit rating agency that has met the Rating Agency criteria set forth herein. In that regard, plan fiduciaries may demonstrate that they have fulfilled their fiduciary responsibilities to the plan by accepting representations from credit rating agencies that the foregoing criteria have been met.'' The Commenters indicate that footnote 23 can have the unintended consequence of requiring a plan fiduciary to obtain representations directly from a rating agency in order to rely upon a rating agency's representation that it has met the Rating Agency criteria set forth in the Notice. The Commenters explain that the offering documents pursuant to which Securities[6] that are intended to qualify under the Underwriter Exemption are issued take a position as to whether the conditions of the applicable Underwriter Exemption are met or may be met, which involves a determination by legal counsel as to whether a credit rating agency satisfies the definition of Rating Agency. The Commenters further explain that plan fiduciaries would in the normal course review such disclosures in the offering documents in making a decision, consistent with their fiduciary responsibilities, to invest in securities. The Commenters propose that the representation to the plan fiduciaries referred to in footnote 23 could, for example, be accomplished indirectly by means of a representation by the rating agency made to the Sponsor,[7] depositor, Issuer,[8] Underwriter[9] or other appropriate party to the securitization transaction (for example in the engagement letter retaining the rating agency to rate the securities). The Commenters state that counsel to the Issuer, counsel to the Underwriter, and plan fiduciaries, in making their respective determinations as to the applicability of an Underwriter Exemption would be able to take into account any relevant representations provided by the rating agencies in the engagement letters discussed above.

The Commenters also state that they did not read footnote 23 and the accompanying text as intending to limit the alternatives that are available for determining that a rating agency has met the Rating Agency criteria under the Notice or that a representation to plans by a rating agency is the sole means by which a rating agency could demonstrate that it has met the Rating Agency criteria set forth in the Notice. The Commenters, however, express their belief that if the Department were to confirm that additional alternative methods could be used to ascertain whether a rating agency has, in fact, met the Rating Agency criteria, this would greatly facilitate transactions being able to proceed under the Notice when finalized.

The Department, in stating that plan fiduciaries ''may accept representations from credit rating agencies to confirm that the Rating Agency criteria have been met,'' sought to identify direct representations by credit rating agencies

[5] The attorneys that signed the Comment are: Micah Bloomfield of Stroock & Stroock & Lavan LLP; Susan M. Camillo of Dechert LLP; Sarah Downie of Orrick, Herrington & Sutcliffe LLP; Richard Gilbert of Trucker Huss, APC; Tae Jeon of Ashurst, LLP; Barbara D. Klippert of Bingham McCutchen LLP; Lennine Occhino of Mayer Brown LLP; Leslie Okinaka of Hunton & Williams LLC; David C. Olstein of Skadden, Arps, Slate, Meagher & Flom LLP; Andrew L. Oringer of Dechert LLP; Steven W. Rabits of Stroock & Stroock & Lavan LLP; and Kathleen Wechter of Kaye Scholer LLP.

The Commenters explained that they submitted the Comment in the hope that their experience in working with the Underwriter Exemptions would be of assistance to the Department in finalizing the Notice. Specifically, the Commenters stated that in the course of their practices, they (i) may represent various Sponsors, Underwriters or plans regarding whether securitization transactions and the securities issued in such transactions meet the conditions of the Underwriter Exemptions and are thus eligible to be purchased or sold by the plans and; (ii) may also be called upon to render legal opinions as to whether the offering documents relating to the securities accurately describe matters of law relating to the Act, which by definition include their conclusions as to whether securities intended to be eligible to be purchased by plans pursuant to the Underwriter Exemptions are so eligible. In addition, the Commenters stated that a number of the attorneys listed as signatories of the Comment have represented Underwriters in their application and receipt of Underwriter Exemptions and amendments thereto from the Department, which Underwriter Exemptions would be amended by the Notice.

[6] The term ''Security'' is defined in section III.A of the Underwriter Exemptions.

[7] The term ''Sponsor'' is defined in section III.D of the Underwriter Exemptions.

[8] The term ''Issuer'' is defined in section III.B of the Underwriter Exemptions.

[9] The term ''Underwriter'' is defined in section III.C of the Underwriter Exemptions.

to plans as one of the possible means by which plan fiduciaries may confirm that the Rating Agency criteria have been met. In this regard, the Department acknowledges that it is possible for plan fiduciaries, consistent with their duties under section 404 of ERISA, to alternatively rely on material, indirect representations in making such confirmations. Accordingly, the Department agrees with the Commenters that the reference in footnote 23 that plan fiduciaries ''may accept representations from credit rating agencies to confirm that the Rating Agency criteria have been met'' should not be viewed as precluding plan fiduciaries from relying on material, indirect representations by rating agencies when confirming whether such agencies have met the Rating Agency criteria set forth in the Underwriter Exemptions.

2. *Requested Modification of Clause (3) of the Definition of Rating Agency.* The Commenters note that clause (iii) of the definition of ''Rating Agency'' refers to the rating agency having had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements.'' The definition of ''qualified ratings engagement,'' meanwhile, refers to one ''requested by an issuer or underwriter of securities in connection with the initial offering of the securities.'' The Commenters believe that confusion may be created because the reference to 12 months prior to the ''closing of the current transaction'' could be taken to include a secondary market transaction. The Commenters state that such a requirement would be extremely difficult for investors in the secondary market to confirm. Therefore, the Commenters suggest that once a rating agency qualifies as a Rating Agency as of the initial offering of a securitization transaction, it should remain qualified as a Rating Agency for purposes of the particular securities issued in that transaction when such securities are purchased in the secondary market. The Commenters state that security ratings are requested by an Issuer or an Underwriter of securities with respect to a structured finance transaction in the following circumstances: A rating agency may be asked to rate securities issued on the Closing Date; [10] or if the securities are not rated or the Issuer or Underwriter is not able to sell the securities, a new rating agency may be asked to rate the securities at a later date. Such securities rated at a later date are considered to be sold as part of the initial offering as they have not yet been sold to any party other than the Underwriter. As part of a rating agency's engagement, it agrees to update its rating periodically over the life of the security. The Issuer or Underwriter would not retain another rating agency to rate the securities upon a secondary market transfer. Accordingly, the Commenters suggest that the reference in clause (iii) of the definition of ''Rating Agency'' to the rating agency having had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) 'qualified ratings engagements' '' could be changed to avoid confusion to read that the rating agency has had ''within a period not exceeding 12 months prior to either, the Closing Date or the initial issuance of the securities, at least three (3) 'qualified ratings engagements.' ''

Upon consideration of the comment above, the Department agrees that clause (iii) of the definition of Rating Agency should be modified. The Department has modified the relevant portion of clause (iii) of the Rating Agency definition to require that a Rating Agency, ''has had, within a period not exceeding 12 months prior to the initial issuance of the securities, at least three (3) 'qualified ratings engagements.' '' Given the Commenters' representation that an Issuer or Underwriter would not retain another rating agency to rate the securities upon a secondary market transfer, the Department believes that once a rating agency qualifies as a Rating Agency as of the initial offering of a securitization transaction, it should remain qualified as a Rating Agency for purposes of the particular securities issued in that transaction to the extent that the rating agency is still updating its rating of the security. However, while a Rating Agency's rating of securities sold as part of an initial offering of securities may be counted as a ''qualified ratings engagement,'' subsequent updates of the same security by such Rating Agency may not be counted as a ''qualified ratings engagement'' for purposes of determining whether the Rating Agency has had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) 'qualified ratings engagements,' '' as described in clause (iii) of the definition of ''Rating Agency.''

3. *Requested Clarification of Sub-Clause (iii) of the Definition of a ''qualified ratings engagement.''* The Commenters note that sub-clause (iii) of the definition of ''qualified ratings engagement'' set forth in the Notice refers to the term ''public rating.'' The Commenters believe that it would be helpful to clarify that this term refers to a rating which is made public to investors generally, as opposed to one that is made available only to certain investors. The Commenters suggest that the Department clarify that the nature of the type of a securities offering should not be determinative of whether a rating was ''public.'' The Commenters believe, for example, that securities issued pursuant to a private placement using a private placement memorandum as the offering document should be covered, provided the rating is available to the public. The Commenters also note that, at this time, many more securities of the type that would be granted relief under the Underwriter Exemptions are sold in private placements than are sold in public offerings.

The Department, in proposing to describe a ''qualified ratings engagement'' as, among other things, a ''public rating,'' intended that such rating be a rating that is made public to investors. Accordingly, the Department did not intend that such term refers to a rating that is available only to a controlled number of investors. The Department notes that a rating may be made public to investors generally in addition to being set forth in an offering document, such as a private placement memorandum, that is received by a controlled number of recipients. To clarify the views above, the Department is changing the term ''public rating'' as it appears in sub-clause (iii) of the definition of ''qualified ratings engagement,'' to read ''rating that is made public to investors generally.''

4. *Requested Clarification of Sub-Clause (iv) of the Definition of a ''qualified ratings engagement.''* The Commenters seek two clarifications relating to sub-clause (iv) of the definition of a ''qualified ratings engagement.'' First, the Commenters note that sub-clause (iv) of the definition of a ''qualified ratings engagement'' provides that during the applicable 12-month period such engagement ''involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.'' The Commenters further note that, in contrast, the Department's reference to this requirement in the preamble to the Notice reads: ''. . . the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.'' [11] The Commenters state that the term ''similar transactions,'' as set forth in the

[10] The term ''Closing Date'' is defined in section III.Z of the Underwriter Exemptions.

[11] See Representation 4 of the Notice on page 76775.

preamble, is substantively narrower than the phrase ''securities of the type that would be granted relief under the Underwriter Exemptions,'' as set forth in sub-clause (iv) of the definition of a ''qualified ratings engagement.'' The Commenters believe that this distinction creates uncertainties regarding which ''transactions'' are ''similar'' in nature. The Commenters also state that in the current market conditions, few asset-backed and mortgage-backed securities of the type covered under the Underwriter Exemptions are being offered. The Commenters opine that this creates fewer opportunities for the rating agencies to rate the necessary securities over a rolling 12-month period, and that this in turn could prevent securities of the type that would otherwise be granted relief under the Underwriter Exemptions from being available to be purchased by plans. The Commenters believe that it is the Department's intent, as reflected in the text of the Notice, and more consistent with the general approach of the Underwriter Exemptions, that any security that is backed by the type of receivable that would be granted relief under the Underwriter Exemption would be satisfactory. Accordingly, the Commenters seek clarification that reference to ''similar transactions'' includes any offering of securities of the type that would be granted relief by the Underwriter Exemptions even if the securities were backed by different types of obligations (or combinations thereof), were issued as certificates or notes or were issued in transactions having different structures.

Regarding this first issue, the Department notes that the term ''similar transactions,'' as found in the preamble to the Notice, was not intended to narrow the scope of the express definition of a ''qualified ratings engagement,'' which, as noted above, involves ''the offering of securities of the type that would be granted relief by the Underwriter Exemptions.'' The Department agrees with the Commenters that the term ''similar transactions'' is intended to reference an offering of securities of the type that has been granted relief under the Underwriter Exemptions, including where the securities are backed by a different type of obligation (or types of obligations), or were issued as certificates or notes, or were issued in transactions having different structures. In this last regard, however, the Department emphasizes that such different structure(s) must be of a type that is currently permitted by the Underwriter Exemptions.

The second clarification sought by the Commenters relates to the same preamble language described above, that that ''the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.'' [12] The Commenters seek clarification regarding whether the word ''selected'' means the date the rating agency is engaged to rate the securities, as set forth in the rating agency's engagement letter, or the date such securities are first issued. The Commenters state that otherwise, the term ''selected'' could be subject to differing interpretations. In addition, the Commenters state that there can be considerable lag time between the date the rating agency is engaged and the date the securities it rates are actually issued, which can arbitrarily affect whether the three-engagement requirement has been met. The Commenters opine that this could prevent securities of the type that would otherwise be granted relief under the Underwriter Exemptions from being eligible to be purchased by plans.

Regarding this second issue raised by the Commenters, the Department notes that the three-engagement requirement is intended to ensure that a qualified rating agency is ''seasoned.'' As between the date that a rating agency is first selected and the date that the securities it rates are issued, the Department believes that the more relevant date is the date that the securities are issued. It is the view of the Department, therefore, that the preamble phrase, ''. . . the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months,'' refers to the date that the securities are issued.

Accordingly, after giving full consideration to the entire record, including the Comment Letter, the Department has determined to grant the exemption as modified herein. For a more complete statement of the facts and representations supporting the Department's decision to amend the Underwriter Exemptions, refer to the notice of proposed exemption (the Notice) that was published on December 28, 2012 in the **Federal Register** at 77 FR 76773. For further information regarding the Comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11718) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

[12] Id.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of the interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of July, 2013.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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